IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA No. 168 of 2004
Date of Decision: 29.01.2007

State of Punjab and others

.....Appellants through
Mr. Sanjeev Sharma,
Addl. Advocate General,
Punjab

versus

Dr. Balbir Bhardwaj

.....Respondent through
Mr. Sunil Chadha,
Advocate

CORAM: HON'BLE MR. JUSTICE VIJENDER JAIN,
CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIVE BHALLA

1. **Whether Reporters of Local Newspapers may be allowed to see the judgment ?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

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Vijender Jain, Chief Justice (Oral)

Aggrieved by the order passed by the learned Single Judge, the State of Punjab has filed the present appeal.

The respondent joined the Indian Army, on 25.04.1966, as a Lieutenant. He was discharged on 18.11.1976.

The Punjab Public Service Commission issued an advertisement dated 2.12.1978, appended to the writ petition as Annexure P-3, inviting applications for 39 posts of Dental Assistant Surgeons. 7 posts were reserved for Indian Armed Forces Personnel appointed in the armed forces on or after 01.11.1962 and released thereafter. As the respondent, was eligible for the post of Dental Assistant Surgeon, under the quota reserved for Armed Forces Personnel, he applied and was selected. He was appointed as an adhoc Dental Assistant Surgeon vide memo dated 5.5.1979. He, thereafter, made a representation praying for the grant of benefit of military service. Rejection of his representation led to the filing of a writ petition. The writ petition was allowed by holding that the respondent was deemed to have been appointed under the 1978 Punjab State Technical (Medical & Engineering) Services Rules (for short 1978 Rules) and was therefore, entitled to the benefit of military service.

Mr. Sanjeev Sharma, Addl. Advocate General, for the State of Punjab assails the findings of the learned Single Judge on the ground that the respondent was not entitled to the benefit of military service under the 1978 Rules as these rules stood repealed, on 31.12.1978 i.e. before the respondents appointment as a Dental Assistant Surgeon on 5.5.1979. It is, therefore, argued that the learned Single Judge erred in granting benefit of military service under the 1978 Rules.

A query addressed to learned counsel for the appellant that if the respondent was not appointed under the 1978 Rules, then under what rules, was he appointed, did not draw any response. Except for a bald

statement in paragraph No.9 of the written statement, filed by the appellant, to the effect that the respondent was appointed against a reserved post for released Indian Armed Forces Personnel, under the provisions of prevailing instructions issued by the State Government, no instructions, rules or regulations, other than the 1978 Rules, were brought to the notice of the learned Single Judge or have been placed before this Court. The so called "prevailing instructions" have failed to see the light of day. As the respondent was admittedly appointed against a post reserved for Armed Forces Personnel's in accordance with the 1978 Rules, the learned Single Judge correctly returned a finding that the respondent was deemed to have been appointed under the 1978 Rules.

Another aspect that has been highlighted by learned counsel for the respondent is that the vacancy arose on 2.12.1978, when the advertisement was issued by the Punjab Public Service Commission, at the behest of the appellant. The advertisement issued is as under :-

EXTRACT FROM THE TRIBUNE DATED DECEMBER 2, 1978

PUNJAB PUBLIC SERVICE COMMISSION, PATIALA,140001

ADVERTISEMENT NO.25

Applications are invited by 1.1.1979 (16.1.1979) for applicants abroad in the case of categories No. III and IV for the following posts:-

"II) Thirty Nine (39) posts of DENTAL ASSISTANT SURGEON (Class-II), Ten posts reserved for Member of Schedule Castes of Punjab, for Backward Classes of Punjab and seven for Indian Armed Forces Personnel, who had joined the Indian Army or were commissioned on or after 01.11.1962 and were released thereafter Pays:- Rs.400-1100

plus usual allowances. Three advance increments admissible to Post Graduate. Age between 20 and 35 years on 01.01.1978 relaxable for Govt. employee to the extent of their service i.e. (i) a degree of B.D.S. from a recognised University (ii) must be registered as Dental Surgeon under Dental Act, 1948 (iii) a pass in Punjabi of Matric or its equivalent standard. Candidates not having such qualification will have to acquire the same within a period of six months from the date of their appointment failing which their services will be terminated. Higher Dental qualifications preferred."

A bare perusal of the aforesaid advertisement reveals reservation for a class of Indian Armed Forces Personnel, who had joined the Indian Armed Forces or were commissioned on or after 01.11.1962, as envisaged by rule 3(e), i.e. a reservation of 20% for Armed Forces Personnel's. Rule 3(e) of the 1978 Rules is to the following effect:-

3(e) " Released Indian Armed Forces Personnel" means the Indian Armed Forces Personnel's who were commissioned to or who joined the Armed Forces of the Union, as the case may be, on or after 1st day of November, 1962, but before the 10th day of January, 1968 and who were released on demobilization thereafter but does not include:-

i) Volunteer Reserved Forces Personnel of the Armed Forces of the Union called upon for temporary service; or

ii) Indian Armed Forces personnel who, before their appointment against vacancies reserved under these rules:-

a) are granted permanent commission or;

b) joined or join a civil service of the Union or a Civil Services of a State or a civil post under the Union or a State

after their release from the Armed Forces of the Union;

iii) Engineers and Doctors employed under the Central Governments or State Governments or Government-owned industrial undertakings after 1963, who were required to serve in the Armed Forces of the Union for a minimum prescribed period under the Compulsory Liability Scheme and who are granted Short Service Commission under the rules during the period of such service; "

It is, thus, apparent that the advertisement pursuant, whereto the respondent was appointed, was issued in terms of rule 3(e) of the 1978 Rules. The respondent was selected and appointed in accordance with these Rules. The learned Single Judge, thus, rightly granted the benefit of military service.

The impugned judgment does not call for any interference. There being no merit in this appeal, the same is dismissed.

(VIJENDER JAIN)
CHIEF JUSTICE

(RAJIVE BHALLA)
JUDGE

29.01.2007
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